

B-104 (Rev. 2/92) ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS: JUAN R. GOMEZ MARTINEZ; NILSA M. RODRIGUEZ CORREA		DEFENDANTS: POPULAR INC. D/B/A POPULAR AUTO; JOHN DOE; XYZ CORPORATION	
ATTORNEYS (Firm NAME, Address and Telephone No.) NOEMI LANDRAU RIVERA, ESQ. 497 LA CUMBRE E. POL AVE. BOX 660 SAN JUAN, P.R. 00926-5636 TEL. (787) 774-0224 / FAX (787) 794-1004		ATTORNEYS (if known): <i>NOEMI LANDRAU RIVERA, ESQ.</i>	
PARTY (Check one box only)		<input type="checkbox"/> 1 U.S. PLAINTIFF	
		<input type="checkbox"/> 2 U.S. DEFENDANT	
		<input checked="" type="checkbox"/> 3 U.S. NOT A PARTY	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)			
WILLFUL VIOLATION OF THE AUTOMATIC STAY; 11 U.S.C. § 362			
NATURE OF SUIT (Check the one most appropriate box only.)			
<input type="checkbox"/> 454 To Recover Monty or Property		<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan	
<input type="checkbox"/> 435 To determine Validity, Priority, or Extent of a Lien or other Interest in Property		<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523	
<input type="checkbox"/> 457 To obtain approval for the sale of both the interest of the estate and of a co-owner in property		<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727		<input type="checkbox"/> 458 To subordinate any allowed claim Or interest except where such Subordination is provided in a plan	
<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action		<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court	
<input type="checkbox"/> 498 Other: (specify) Violation of the automatic stay			
ORIGIN OF PROCEEDINGS		<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated Or Reopened <input type="checkbox"/> 5 Transferred from another Bankruptcy Court <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
DEMAND	NEAREST THOUSAND: \$75,000.00		OTHER RELIEF SOUGHT AN ORDER TO CEASE AND DESIST
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTORS: JUAN R. GOMEZ MARTINEZ NILSA M. RODRIGUEZ CORREA		BANKRUPTCY CASE NO. 06-00285 GAC	
DISTRICT IN WHICH CASE IS PENDING PUERTO RICO		DIVISIONAL OFFICE	NAME OF JUDGE GERARDO CARLO ALTIERI
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF		DEFENDANT	
DISTRICT		NAME OF JUDGE	
FILING FEE : (Check one box only.)		<input type="checkbox"/> FEE ATTACHED <input checked="" type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED	
DATE: DECEMBER , 2006		PRINT NAME: NOEMI LANDRAU RIVERA, ESQ.	
		SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>Noemi Landrau Rivera</i>	

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO

IN RE:

JUAN R. GOMEZ MARTINEZ
NILSA M. RODRIGUEZ CORREA

DEBTOR

JUAN R. GOMEZ MARTINEZ
NILSA M. RODRIGUEZ CORREA
PLAINTIFFS

v.

POPULAR INC. D/B/A POPULAR AUTO;
JOHN DOE; XYZ CORPORATION
DEFENDANT

CASE NO. 06-00285 GAC

CHAPTER 13

ADVERSARY NO. _____

WILFUL VIOLATION OF AUTOMATIC
STAY PURSUANT 11 U.S.C. § 362;
CIVIL CONTEMPT

COMPLAINT

TO THE HONORABLE COURT:

Come now, JUAN R. GOMEZ MARTINEZ and NILSA M. RODRIGUEZ CORREA, Plaintiffs, herein through the undersigned attorney, and very respectfully before this Honorable Court presents the following complaint and pray:

I. JURISDICTION OF THIS COURT

Jurisdiction is invoked under 28 United States Code Section 157 (a)(b)(1) and §§ 157 (b)(2)(I), (b)(2)(O) and Section 1334. This proceeding is a core proceeding.

II. VENUE

Venue is proper in this District Court under 28 U.S.C. §1408 & §1409, in as such as all the events or omissions giving rise to the claims of the captioned case occurred within the territory of this jurisdictional district.

III. PARTIES

1. JUAN R. GOMEZ MARTINEZ and NILSA M. RODRIGUEZ CORREA,

hereinafter "Plaintiffs", are of legal age, married to each other, employed and resident of San Juan, Puerto Rico, with the following residential and mailing address: 1893 Calle Juan Suarez, Urb. Fair View, Rio Piedras, PR 00926.

2. POPULAR INC. d/b/a POPULAR AUTO, hereinafter referred to as "POPULAR AUTO", is, to the best of PLAINTIFF's knowledge, a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, with the following address: 1901 Jesus T. Piñero Avenue, Suite 467, San Juan, PR 00920-5608.

3. JOHN DOE, is fictitious or unknown defendant that is jointly and severally responsible for the acts alleged in this complaint.

4. XYZ CORPORATION, is fictitious or unknown defendant insurance company, that is jointly and severally responsible for the acts alleged in this complaint.

III. FACTS

5. On February 4, 2006 Plaintiffs filed a voluntary Chapter 13 petition for bankruptcy relief, under case number 06-00285 GAC. Docket Entry No. 1. Trustee has not been discharged and the case remains active.

6. POPULAR AUTO is unsecured creditor of debtor by virtue of auto lease agreement obtained by Juan R. Gomez Martinez with POPULAR AUTO.

7. POPULAR AUTO was listed in Schedule F of Plaintiffs' petition for relief, included in the master address list and notified of the bankruptcy proceedings.

8. On March 1, 2006 POPULAR AUTO filed a unsecured proof of claim in the amount of \$3,499.20. See Claims Register Entry No. 5.

9. Plaintiffs' amended payment plan dated May 5, 2006 was confirmed by the Court on August 9, 2006. See Docket Entry No. 27. No objection to amended payment plan dated May 5, 2006 was filed by any creditor and no action for revocation of

confirmation has been filed.

10. On or about the date of October 23, 2006 Plaintiffs received a collection letter from POPULAR AUTO requesting payment in the amount of \$3,532.80 for debt which was provided for under approved chapter 13 payment plan and for which POPULAR AUTO had filed proof of claim. Copy of collection letter sent to Plaintiffs by POPULAR AUTO is attached and identified as **Exhibit A**.

11. On or about the date of November 21, 2006 Plaintiffs received an additional collection letter from POPULAR AUTO requesting payment in the amount of \$3,532.80. Payment requested was for a debt which was provided for under approved chapter 13 payment plan and for which POPULAR AUTO had previously filed proof of claim on March 1, 2006. Copy of collection letter sent to Plaintiffs by POPULAR AUTO is attached and identified as **Exhibit B**.

12. Plaintiff have received from POPULAR AUTO two illegal collection letters which request payment for debt which was included in Plaintiffs' petition for relief and for which POPULAR AUTO filed a proof of claim in the present case.

13. In as much as POPULAR AUTO made collection efforts to Plaintiffs through the sending of collection letters requesting payment of a debt included in Plaintiffs' petition, debt for which POPULAR AUTO filed proof of claim and provided for in confirmed payment plan, POPULAR AUTO violated the automatic stay entered by this Court.

14. POPULAR AUTO's actions constitute a collection effort against a debtor stayed by the automatic stay and the statutes of the Bankruptcy Code and caused Plaintiffs stress, anguish and mental suffering.

IV. VIOLATION OF AUTOMATIC STAY

15. Creditor's collection efforts against a debtor that filed for relief under the

Bankruptcy Code constitutes a violation of the automatic stay, according to Section 362 of the Bankruptcy Code, 11 U.S.C. § 362.

16. Collection efforts include any act to create, perfect or enforce any lien against property of the estate, 11 U.S.C. § 362 (4); any act to obtain possession of property of the estate or of property from the estate or to exercise control over the property of the estate, 11 U.S.C. § 362 (3) and any conduct described in Section 362 of the Bankruptcy Code.

17. The protection of Section 362 of the Bankruptcy Code begins from the very moment the bankruptcy petition is filed until the case is closed or dismissed. At the time of the POPULAR AUTO's collection efforts, the case was not dismissed or closed.

18. POPULAR AUTO's actions were collection efforts against a debtor that is protected by the automatic stay, and therefore constitute a wilful violation of the automatic stay.

19. POPULAR AUTO had knowledge of the automatic stay and it was informed that all actions or proceedings to collect monies, enforce any claims or to levy on property of Debtor subsequent to the filing of the aforesaid petition were stayed by law. Furthermore, POPULAR AUTO appeared before the Court in the Main Case to file a proof of claim.

20. Damages under Section 362 of the Bankruptcy Code include actual and punitive damages for violation of the automatic stay.

21. The actions perpetrated by POPULAR AUTO caused damages to Plaintiffs, as they have been placed in a state of anguish, mental suffering and uncertainty.

22. Plaintiff's damages include stress, frustration, anxiety for receiving collection letters requesting payment of a debt which had been provided for and addressed in

confirmed payment plan.

23. The actions perpetrated by POPULAR AUTO and/or its agents are a clear and willful violation of the automatic stay.

V. CIVIL CONTEMPT

24. Plaintiffs reallege each and every preceding allegation as if fully set herein.

25. In doing so, POPULAR AUTO, acted with knowledge that Plaintiff had previously filed a bankruptcy petition and that such act was a willful violation of the Automatic Stay Order.

26. Such actions were willful and egregiously in violation of the Automatic Stay Order.

27. POPULAR AUTO had knowledge of the wrongs conspired as aforesaid, had the power to prevent or aid in preventing the commission of the same and neglected to do so.

28. As a result of POPULAR AUTO's intentional, deliberate and unlawful conduct, Plaintiffs are entitled to compensatory damages in the amount of \$ 25,000.00 for suffering and mental anguish.

29. Defendant's intentional and deliberate actions are in reckless disregard of this Honorable Court orders, namely the automatic Stay Order, for which punitive damages in an amount not less than \$50,000.00 dollars should be awarded to Plaintiffs.

30. As a result of the Defendant's deliberate actions, Plaintiff is entitled to reasonable costs and attorney's fees.

WHEREFORE, in view of the foregoing, Plaintiffs respectfully request this Honorable Court to grant judgement in their favor in the following manner:

- i. \$ 25,000.00 in actual damages against POPULAR AUTO.
- ii. \$50,000.00 in punitive damages against POPULAR AUTO.
- iii. Costs and attorney's fees pursuant to 11 U.S.C. § 362(h).
- iv. An order to Cease And Desist From Violations Of The Automatic Stay, against POPULAR AUTO.
- v. That POPULAR AUTO be held in contempt of court for willful violation of the automatic stay order.
- vi. Any other relief that this Honorable Court may deem appropriate

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 26 day of December, 2006.

That a true and correct copy of this Complaint has been served to Chapter 13 Trustee, **Alejandro Oliveras**, at PO Box 9024092, San Juan, P.R. 00902-4062 and to all parties in interest as per master address list.

LANDRAU RIVERA & ASSOCIATES
Counsel for Plaintiff
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San Juan, PR 00926-5639
Tel. (787) 774-0224
Fax. (787) 793-1004
Email: landraulaw@prtc.net

NOEMI LANDRAU RIVERA
USDC 215510



1901 AVE JESUS T. PIÑERO STE 467
SAN JUAN, PR 00920-5608

STATEMENT

EXHIBIT

A

CUSTOMER NO. 020007334000

INVOICE NBR. 0007334000B-01

CONTRACT NBR. 0007334000B

INVOICE DATE 10-23-06

TOTAL DUE 3,532.80

AMOUNT PAID

1
JUAN R GOMEZ
URB FAIRVIEW
1893 CALLE JUAN SUAREZ
SAN JUAN, PR 00926-7633

0200073340009 1023060 000000353280

DETACH HERE AND RETURN THIS PORTION WITH YOUR PAYMENT. PLEASE DO NOT SEND CASH

ACCOUNT NBR	DESCRIPTION	AMOUNT	TAX	TOTAL
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4069127000 00 PLAN PAGOS
TERM: 36MIS: 38

PRIOR BILLING AND MISCELLANEOUS CHARGES			
BASE RENT	3,360.00		3,360.00
TOTAL			3,360.00
PRIOR LATE CHARGES	172.80		172.80
LEASE TOTAL			3,532.80

PAYMENT DUE BY 11-01-06

CALL CUSTOMER SERVICE @ 787-792-9282 TO
SIGN UP FOR AUTOMATIC PAYMENT OPTION;
IF YOU ARE 12 MONTHS OR LESS TO MATURITY
CALL 787-751-4848 FOR LEASE END OPTIONS.

1901 AVE JESUS T. PIÑERO STE 467
SAN JUAN, PR 00920-5608

INVOICE NBR. 0007334000B-01
BILLING PERIOD. 12-01-06
INVOICE DATE 11-21-06
TOTAL DUE 3,532.80
AMOUNT PAID

1

JUAN R GOMEZ
URB FAIRVIEW
1893 CALLE JUAN SUAREZ
SAN JUAN, PR 00926-7633

POPULAR AUTO
1901 AVE JESUS T. PIÑERO STE 467
SAN JUAN, PR 00920-5608

0200073340009 1121060 000000353280

DETACH HERE AND RETURN THIS PORTION WITH YOUR PAYMENT. PLEASE DO NOT SEND CASH.

ACCOUNT NBR.	DESCRIPTION	AMOUNT	TAX	TOTAL
4069127000	00 PLAN PAGOS			
TERM: 36MIS: 39	PRIOR BILLING AND MISCELLANEOUS CHARGES			
	BASE RENT	3,360.00		3,360.00
	TOTAL			3,360.00
	PRIOR LATE CHARGES	172.80		172.80
	LEASE TOTAL			3,532.80

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CALL 787-751-4848 FOR LEASE END OPTIONS.

RETAIN THIS PORTION OF THE STATEMENT FOR YOUR RECORDS

TOTAL

3,532.80